

Message Text

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PAGE 01 BERN 01343 081424Z

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ACTION SCSE-00

INFO OCT-01 EUR-25 ISO-00 L-03 JUSE-00 SCA-01 /030 W

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R 081337Z APR 74

FM AMEMBASSY BERN

TO SECSTATE WASHDC 8883

UNCLAS BERN 1343

E.O. 11652: N/A

TAGS: CGEN, SZ

SUBJECT: TRANSMITTING LETTERS ROGATORY IN THE MATTER OF
SEC V. KASSER, ET AL.

REF: DEPT'S A-1913

LETTERS ROGATORY REQUESTING SERVICE OF LEGAL PROCESS
IN THE SUBJECT CASE AND TRANSMITTED BY REF AIRGRAM
WERE SENT TO THE POLICE DIVISION (PD) OF THE FED DEPT
OF JUSTICE AND POLICE ON MARCH 14, 1974. TODAY THE PD
INFORMED EMBOFF THAT THE LETTERS ROGATORY COULD NOT, RPT
NOT, BE EXECUTED AND SUGGESTED THEY BE WITHDRAWN. THE PD,
AFTER REVIEW AND INTERPRETATION OF THE ENTIRE FILE, CON-
SIDERS THE SERVICE OF LEGAL PROCESS COULD NOT, RPT NOT,
BE EFFECTED IN SWITZERLAND BECAUSE: A) THE CASE WAS
"ADMINISTRATIVE" AND NOT JUDICIAL; AND B) THE PLAINTIFF
IS THE SEC.

THE PD EXPLAINED THAT THE GOS IS ONLY ABLE TO RENDER
JUDICIAL ASSISTANCE IN THOSE CIVIL CASES INVOLVING WHAT
THE GOS CONSIDERS JUDICIAL MATTERS. EXAMPLES GIVEN WERE
INHERITANCE CASES, BREACH OF CONTRACT, ETC. THE PD
STATED THAT SINCE THE SEC WAS NOT AN INJURED PARTY IN
THIS CASE AND SINCE IT WAS SEEKING PRIMARILY ONLY TO
COMPEL THE DEFENDANTS TO SUPPLY INFORMATION, THE PD
WAS FORCED TO CONCLUDE THAT FROM THE SWISS POINT OF
VIEW THE CASE IS ADMINISTRATIVE. THE EMBOFF EXPLAINED
THAT IN U.S. PRACTICE CHOICE OF FORUM WAS CONTROLLING
AND THAT SINCE THE CASE WAS BEFORE A U.S. DISTRICT
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PAGE 02 BERN 01343 081424Z

COURT IT WOULD BE CONSIDERED "JUDICIAL" IN THE U.S.

THE PD REPEATED THAT IN THE SWISS VIEW THE NATURE OF THE CASE (INCLUDING THE RELIEF SOUGHT) AND NOT THE FORUM DETERMINED WHETHER IT MUST BE CONSIDERED ADMINISTRATIVE OR JUDICIAL.

THE PD ALSO STATED THAT AT THE PRESENT TIME THEY WERE VERY RELUCTANT TO AUTHORIZE THE SERVICE OF ANY SUMMONS INVOLVING THE SEC. THE PD STRONGLY BELIEVES THAT OPPONENTS OF THE JUD. ASSISTANCE TREATY WOULD SEIZE ANY SUGGESTIONS THAT THE SEC "IS CARRYING OUT ACTIVITIES" IN SWITZERLAND TO USE AS AN ARGUMENT AGAINST RATIFICATION OF THE TREATY. THE PD SUGGESTED AS AN ALTERNATIVE TO SERVICE OF SUMMONS THAT THE EMBASSY WRITE KASSER A LETTER STATING THAT A CIVIL SUIT HAS BEEN FILED AGAINST HIM IN THE U.S. AND SUGGESTING THAT KASSER DESIGNATE A PARTY IN THE U.S. TO RECEIVE SERVICE OF PROCESS SINCE THE GOS WOULD NOT PERMIT SERVICE IN SWITZERLAND. THE PD ALSO SUGGESTED THE LETTER INVITE KASSER TO VISIT THE EMBASSY TO READ AND/OR OBTAIN A COPY OF THE SUMMONS AND COMPLAINT. THIS SUGGESTION APPEARS INEFFECTIVE TO THE EMBASSY, BUT IS TRANSMITTED AS RECEIVED FROM PD FOR INFORMATION OF DEPT OF JUSTICE.

ACTION REQUESTED: A) ADVISE IF THE LETTERS ROGATORY SHOULD BE WITHDRAWN (THE EMBASSY RECOMMENDS THEY BE WITHDRAWN) OR WAIT FOR A FORMAL REFUSAL BY THE GOS TO EXECUTE THE REQUEST; B) ONCE LETTERS ROGATORY WITHDRAWN OR RETURNED UNEXECUTED, SHOULD EMBASSY WRITE KASSER AS OUTLINED ABOVE?

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Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
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Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
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